

**IN THE UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF OKLAHOMA**

ROBERT JAMES THOMAS,)	
)	
Plaintiff,)	
)	
v.)	Case No. CIV-17-90-PRW
)	
JOSEPH K. LESTER et al.,)	
)	
Defendants.)	

ORDER

On March 6, 2019, the United States Magistrate Judge issued a Report and Recommendation in this matter recommending that the Court:

- (1) deny Plaintiff's Motion For More Time To Serve Amended Complaint (Dkt. 74) on Defendants McSwain and Davis;
- (2) dismiss all claims against Defendants McSwain and Davis alleged in the 1st Amended Complaint (Dkt. 47) with prejudice;
- (3) grant in part and deny in part Plaintiff's Motion For Leave Of Court To File Second Amended Complaint (Dkt. 86); and
- (4) grant Plaintiff's request to add Defendant Gibson (Dkt. 86).

Plaintiff Robert James Thomas, proceeding pro se, was advised of his right to object¹ and he objected to the Report and Recommendation.² The Court must resolve his objection by "mak[ing] a *de novo* determination of those portions of the report or specified proposed findings or recommendations to which objection is made."³ It then "may accept, reject or

¹ See Dkt. 91, p. 23.

² See Dkt. 95.

³ 28 U.S.C. § 636(b)(1); see Fed. R. Civ. P. 72(b)(3).

modify the recommended disposition; receive further evidence; or return the matter to the magistrate judge with instructions.”⁴

Upon a de novo review of the record, the Court concurs with the Magistrate’s factual findings. The Court also concurs with the Magistrate’s legal conclusions, but finds that the claims against McSwain and Davis in the 1st Amended Complaint (Dkt. 47) should be dismissed *without* prejudice.⁵

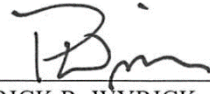
IT IS THEREFORE ORDERED that the Report and Recommendation (Dkt. 91) is ADOPTED in part. Plaintiff’s Motion For More Time To Serve Amended Complaint (Dkt. 74) is DENIED and the claims against McSwain and Davis in the 1st Amended Complaint (Dkt. 47) are dismissed without prejudice. Further, Plaintiff’s Motion For Leave Of Court To File Second Amended Complaint (Dkt. 86) is GRANTED in part and DENIED in part, as set forth in the Report and Recommendation (Dkt. 91).

IT IS FURTHER ORDERED that the case is again referred to the Magistrate for preliminary review, for conducting any necessary hearings, including evidentiary hearings, for the entry of appropriate orders as to non-dispositive matters, and for the preparation and submission to the undersigned judge of proposed findings of fact and recommendations as to dispositive matters referenced in 28 U.S.C. § 636(b)(1)(B) and (C).

⁴ *Id.*

⁵ *See* Fed. R. Civ. P. 4(m).

IT IS SO ORDERED this 24th day of May, 2019.

A handwritten signature in black ink, appearing to read 'P. Wyrick', is positioned above a horizontal line.

PATRICK R. WYRICK
UNITED STATES DISTRICT JUDGE